

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JOE W. KUEFLER, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

WEBLOYALTY.COM, INC. and
FANDANGO, INC. d/b/a
FANDANGO.COM,

Defendants.

CIVIL ACTION NO. 06-cv-11620-JLT

**DECLARATION OF SHANE O'NEILL IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Shane O'Neill, submit the following declaration in support of Defendants' Motion for Summary Judgment.

1. I am the Chief Technology Officer of Fandango, Inc. As such, I am familiar with the world-wide-web page flows and transaction processes used by customers of Fandango's movie ticket service. I am also familiar with the screen flows and transaction processes used by Fandango customers that choose to enroll in Webloyalty's Reservation Rewards program while completing Fandango transactions.

2. This Declaration is based on my personal knowledge of Fandango's systems and their relationship to the systems used by Webloyalty for the Reservation Rewards program, and on my review of Fandango's records regarding the Fandango transaction of Plaintiff Joe Kuefler on December 25, 2005.

3. Plaintiff was a new Fandango customer who purchased movie tickets through Fandango's web site in two separate transactions on December 25, 2005. See Exhibit 1 to this Declaration (Fandango account records for Plaintiff). In the first transaction, Plaintiff purchased four tickets to a film titled "The Chronicles of Narnia" at 2:45 PM Pacific Time on December 25, 2005. See Page 1 of Exhibit 1. Plaintiff enrolled in the Reservations Reward offer in connection with this first transaction. In the second transaction, about two and a half hours later, he purchased one more ticket to the same show. See Page 2 of Exhibit 1.

4. On December 25, 2005, Fandango's world-wide-web transaction screens included information regarding an optional offer from Webloyalty's Reservation Rewards program. This was a Reservation Rewards offer coded 56192. A true and correct copy of the portion of the Reservation Rewards Enrollment page coded 56192 containing the description of the Reservation Rewards program, the scroll-down box containing the Offer and Billing Details, and the email signature sign-in boxes is attached as Exhibit 2 to this Declaration. Further down on the page reflected in this screen capture was a blue button marked "Continue with my ticket purchase."

5. To enroll in Reservation Rewards through this screen flow, Plaintiff was required to take several steps. First, he was required to click an "Optional Offer" box on the "Select Tickets" page. Only if this box was clicked while viewing this page would the full Reservation Rewards offer screen be displayed to the customer later in his transaction.

6. After the Select Tickets page, all Fandango customers were then taken through Fandango sign-in and payment pages. Next, because Plaintiff had previously clicked the "Optional Offer" box, he was shown the full Reservation Rewards Enrollment page. That page described the terms and conditions of the Reservations Reward program, including its price, and plainly stated that, if the

customer elected to sign up for Reservation Rewards, his or her credit card and other personal information would be securely transmitted from Fandango to Reservation Rewards. See Exhibit 2.

7. Thus, to enroll in Reservation Rewards from this offer page, Plaintiff was required to type his email address into two different boxes, and click a button next to the word “YES!”, directly beneath this statement: “By entering my e-mail address as my electronic signature and clicking YES!, I have read and agree to the Offer and Billing Details and authorize Fandango to securely transfer my name, e-mail address, and credit or debit card information to Reservation Rewards for billing and benefit processing.” See Exhibit 2.

8. Next, Plaintiff was required to click “Continue with my ticket purchase.” When he did so, he was taken to a Fandango “Order Review” page. At this page, Plaintiff needed to click “Complete My Purchase” in order to finalize both his Fandango ticket purchase and his enrollment in Reservation Rewards. At this time, and not before, Fandango notified Webloyalty electronically that Plaintiff had enrolled in their Reservation Rewards program.

9. Only after Plaintiff had taken those five steps and after notifying Webloyalty of Plaintiff’s enrollment did Fandango securely transmit Plaintiff’s credit card and other personal identifying information to Webloyalty for purposes of fulfilling his enrollment in the Reservation Rewards program, as previously authorized by the Plaintiff.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 13, 2006 at Los Angeles, California.

/s/ Shane O’Neill
Shane O’Neill